
EXHIBIT C

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PANTECH CO., LTD

Petitioner

v.

CELLULAR COMMUNICATIONS EQUIPMENT LLC

Patent Owner

IPR2014-01133
Patent No. 7,218,923

Held: AUGUST 26, 2015

BEFORE: Judge Jennifer S. Bisk , Administrative Patent Judge

APPEARANCES

FOR THE PATENT OWNER

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PROCEEDINGS

1 JUDGE BISK: Good evening. This is a trial

2 hearing for IPR2014-01133 challenging U.S. Patent No.

3 7,218,923.

4 As you know, each party has 30 minutes to

5 present their argument. Petitioner will speak first,

6 followed by patent owner. Petitioner may elect to

7 reserve some of their time for rebuttal.

8 At this time we'd like Counsel to introduce

9 themselves and who you have with you starting with

10 Petitioners.

11 MR. MAAS: Thank you, Your Honor. I'm

12 Michael Maas with Mayer Brown. I represent LG

13 Electronics and LG Electronics U.S.A.

14 MR. PLUTA: Robert Pluta with Mayer Brown.

15 MR. MURPHY: Yes, Your Honor. This is John

16 Murphy representing the patent owner from Nelson

17 Bumgardner. And with me I have Barry Bumgardner. Thank

18 you.

19 JUDGE BISK: Okay. Whenever you are ready.

20 MR. MAAS: May it please the Board. We'd

1 like to reserve 15 minutes for rebuttal.

2 JUDGE BISK: Okay.

3 MR. MAAS: The Board instituted this IPR --

4 the Board instituted this IPR on two grounds: D'Aviera and Calder and Richardson. In
5 doing so, the Board relied

6 on isolator engine, as well as D'Aviera, as satisfying
7 two claim limitations under Claims 1 and 2, and that is
8 the diverting limitation and the controlling limitation.

9 Similarly, with respect to Calder, the
10 Board relied on two limitations. Relied on interception
11 model of Calder to satisfy the two limitations of the
12 same limitations.

13 The Board's decision is -- is consistent
14 with federal circuit precedent, the disclosures in
15 D'Aviera and Calder and the sworn declaration of
16 Petitioner's expert. Today the patent owner challenges
17 whether the isolator engine and interceptor module can
18 be relied upon to satisfy two limitations that they
19 maintain can only be used to satisfy the controlling and
20 the -- the controlling limitation.

1 That is contrary to federal circuit
2 precedent. That is contrary to the disclosures of
3 D'Aviera and Calder, and that is contrary to the
4 declaration of Petitioner's expert.

5 They have not submitted -- they have not
6 submitted law in support of their argument. They have
7 not submitted an expert declaration in support of their
8 argument. Instead they would have -- they rely on
9 attorney's argument.

10 In contrast to the absence of evidence
11 offered by patent owner, the petitioner has -- the
12 petitioners have identified portions of D'Aviera and
13 Calder that disclose the limitations in question,
14 submitted their report file, submitted the expert
15 testimony in support of their contentions. In absence
16 of countervailing evidence from the patent owner,
17 Petitioners have clearly met their burden of proof
18 demonstrating that the claims are unpatentable by a
19 preponderance of the evidence.

20 Move to slide two.

1 Of the challenged claims, two of them are
2 independent. There's Claim 1 and Claim 24. They're
3 very similar. Claim 1 is a method claim. Claim 24 is
4 an apparatus claim. Limitations are very similar, so
5 I'm just going to walk through the Claim 1 very quickly
6 because I know you're familiar with the claims.

7 Both the claims are directed towards the
8 communication that we have in terminals. The terminals
9 have applications of said messages to the -- to the
10 network. The claims require a diverting of a message --
11 a message -- of the messages sent by the application to
12 the network. The diverted messages are sent to the
13 controlling entity which also resides on the terminal.

14 JUDGE WEINSCHENK: Did you agree with the
15 patent owner's interpretation that this diverting step
16 needs to be performed before the controlling step?

17 MR. MAAS: We agree that it must be
18 performed before the controlling step, yes, sir.

19 JUDGE WEINSCHENK: So you do agree that the
20 order of the steps here is -- is a limitation on the

1 claims? The diverting has to happen, then the
2 controlling?

3 MR. MAAS: We -- we agree with that, Your
4 Honor. And the reason we do is the claim language
5 requires the message be diverted to the controlling
6 entity.

7 And so after the messages got diverted to
8 the controlling entity, the controlling entity controls
9 whether it makes a decision about that message. It
10 decides whether that message can go out the network or
11 if it must -- must be modified somehow or -- or -- for
12 example, perhaps, it even says that the message can't go
13 out to the network and retains it.

14 Then, again, I'd just walked through Claim
15 1, but Claim 24 is very similar. I'll spare us going
16 through that.

17 Patent owner -- the patent owner's
18 arguments have -- have -- were raised in preliminary
19 response, and they were properly rejected. The --

1 that -- to require federal circuit precedent, which we
2 cited -- if we could go to Slide 34. Federal circuit
3 precedent is clearly held that -- that the same element
4 of prior art can be relied on to satisfy more than one
5 claim limitation. There is no need to engage in
6 arbitrary box drawing and exercise on -- the -- the
7 limitations in Calder and D'Aviera -- the elements in
8 Calder and D'Aviera -- the isolation is in the -- the
9 interception module performed both the diverting
10 function and they perform the controlling function.

11 JUDGE WEINSCHENK: Are you saying two --
12 two separate aspects of that isolator engine is
13 performing the different steps, or are you saying the
14 same function performs both things?

15 MR. MAAS: I'm saying the different -- I'm
16 not -- the same function -- excuse me, Your Honor. I'm
17 saying that different aspects of the isolator engine and
18 different aspects of the interceptor module would
19 perform the -- the diverting step and different --
20 and -- and the controlling step. We're not saying that

1 the controlling step is the diverting step.

2 JUDGE WEINSCHENK: So you're saying that
3 within the box, for example, you've shown here the
4 isolator engine, there's separate things that do each of
5 these steps in -- in the order recited in the claims?

6 MR. MAAS: Yes, that -- as we walk
7 through -- as we walk through the references, the
8 isolator block in D'Aviera -- well, it's describing
9 D'Aviera very clearly as an intercepting message. It's
10 also clearly described as controlling that message after
11 the interception has determined whether or not it will
12 be sent out to the communications terminal. So even
13 though it's not -- even though the -- D'Aviera didn't
14 break it up neatly with all -- two discreet blocks
15 labeled "diverting" and "controlling," they clearly
16 describe it as performing the two functions, which --
17 which results -- which necessitates that there must be
18 at least two algorithms as part of that block performing
19 the functions.

20 JUDGE WEINSCHENK: In D'Aviera do all of

1 the messages go to the isolator engine? I think this is
2 one of the patent owner's points. How could it be
3 diverted if the isolator engine is sort of the intended
4 destination of the message?

5 MR. MAAS: I believe that it describes
6 preferred (unintelligible) that they're all -- that
7 they're all diverted, and it describes how it's
8 diverted. It describes -- and it's set forth in the
9 expert declaration, but it describes how the diverting
10 occurs in the hook -- I think it says it uses the hook
11 method where isolation is listed on the port that's
12 assigned to the application --

13 JUDGE WEINSCHENK: So is it -- is it your
14 position that even if the isolator engine takes every
15 single message, that's still diverting?

16 MR. MAAS: That -- that is still our
17 position. Diverting, as the word is construed, means
18 just changing the course -- the intended course of the
19 message. If the application sends out the message,
20 intend that it to go to the network, and the isolation

1 engine intercepts it, then it does it for -- it has the
2 change of course. If it does it for each of the
3 messages that the application -- or -- or every
4 application on the terminal has a change of course, each
5 and every one of those.

6 And so -- and then federal circuit -- and
7 I'm not going to walk through these cases, but the
8 federal circuit precedence is clear that we can rely on
9 the same element the prior art referenced to satisfy the
10 two claim limitations. And the patent owner has cited
11 no cases to -- in support of its requirement that --
12 that there has to be two different boxes in D'Aviera or
13 Calder.

14 And I'll just quickly go through both the
15 D'Aviera -- go through D'Aviera. D'Aviera clearly
16 describes the isolator -- the isolation engine patents
17 performing these two functions: diverting and the
18 control.

19 If we could go to slide 14.

20 In slide 14 -- and this is a cite from

1 Exhibit 1008, which is D'Aviera column -- page 3, line
2 21 through 24, and it's clearly describing the -- the
3 isolation engine is intercepting -- intercepted
4 information to be sent from the terminal to the network.
5 It says, "On the other hand, information to be sent to
6 the Internet is intercepted by an isolator engine,
7 (Isolator) 225, which in turn retransmits the
8 information to the network module 220. So it's sent out
9 directly to the Internet, the isolation engine
10 intercepts it, it retransmits it, if appropriate, as
11 well it turns to the next limitation connection, decline
12 to retransmit.

13 Go to slide 15.

14 In slide 15, again, this is a quotation
15 from the D'Aviera, page 3 -- page 3, lines 25 to 29,
16 describing that D'Aviera -- the isolation engine has a
17 privacy -- has privacy list, and it determines whether
18 or not, depending on whether that message meets the --
19 the -- falls within that list or not, to send that
20 message on. If it falls within the privacy list, the

1 message is sent on. That's cited in our petition on
2 page 36 of the Williams' declaration that -- at pages 3
3 and 4.

4 And patent -- you should note that patent
5 owner's position is contrary to the testimony of the
6 only expert testimony before us. They had the
7 opportunity to submit their own expert declaration in
8 their response. They declined to do so. So
9 Dr. Williams is the only one that submitted sworn
10 testimony to explain that -- this from a technical
11 standpoint. The isolation is -- is performing these two
12 functions and satisfying these two claim elements.

13 And just to help the Board's decision,
14 the -- the arguments we presented by the -- the -- by
15 the patent owner were presented in preliminary response,
16 and they were correctly rejected by the Board. It's an
17 institution decision, and nothing has changed since that
18 institutional decision. There's no -- they did not
19 submit an expert declaration. There's no new case law.

20 JUDGE BISK: I noticed that the patent

1 owner hasn't cited any case law, but at this point the
2 functions have to be -- they have to have different
3 elements, but there are federal circuit cases that do
4 find -- find that way. So there's -- there's a case
5 called Becton, Dickinson where a claim list elements
6 separately. The clear explanation of the claim language
7 is that those elements are distinct components of the
8 patent invention. And then it goes on to not find
9 anticipation by one element in the -- in the prior art
10 reference.

11 So what I'm wondering is in D'Aviera can
12 you -- can you point to something that shows that the
13 isolator between those two distinct things separately,
14 that the -- the -- the -- in determining control -- or
15 the diverting and then controlling? Is there any
16 disclosure of that?

17 MR. MAAS: Well, the --

18 JUDGE BISK: Or just -- are you just saying
19 that because it does those two functions, it does them
20 separately?

1 MR. MAAS: It -- it -- would you go back to
2 slide 2. Basically, that is our argument. D'Aviera
3 teaches that the -- teaches that messages -- that it
4 intercepts messages. It describes -- it's in the expert
5 declaration, but it describes how it intercepts using
6 the hook method. So it -- that -- in order to get it to
7 the controlling entity, which is also in the isolator
8 engine, it first has to have a message.

9 JUDGE BISK: So how do we know it's
10 different? Do you -- do you call it a different entity?
11 Is there language in D'Aviera that discusses those
12 different entities?

13 MR. MAAS: Well, D'Aviera discusses it as
14 just a single block. That's one of the -- that's the
15 reason we -- it's -- our expert opined that it was
16 inherent that there be another program in D'Aviera and
17 the isolator -- isolation engine which would perform on
18 this function because D'Aviera would have to be --

19 JUDGE BISK: So we just -- so we just have
20 the expert testimony? There's nothing in disclosure --

1 MR. MAAS: We have the --

2 JUDGE: -- specifically?

3 MR. MAAS: We have the undisputed expert

4 testimony that -- that it's inherent in the isolation

5 engine, and we also, just as a matter of law, think it's

6 performing two different functions; therefore, it would

7 need -- it would need two different algorithms, at the

8 very least, to perform each function. The intercepting

9 is not the controlling. If it was -- if -- if it can

10 intercept every message, it would intercept every

11 message that didn't perform any controlling function,

12 then it would certainly -- the purpose -- all those

13 messages would just go out and be retransmitted. But,

14 in fact, it has -- if you go to slide 15.

15 JUDGE WEINSCHENK: If you just want to lean

16 down a little bit into the mic so that people can hear

17 you. I think it's not really -- it can't go any higher,

18 but it might pick you up a little better if you at

19 least --

20 MR. MAAS: Sorry.

1 JUDGE WEINSCHENK: Yeah, that's better. I

2 mean, we can hear you, but some folks sitting in the
3 back so. . .

4 MR. MAAS: So we go up with D'Aviera
5 controlling -- controlling aspect, there's a definite
6 privacy list which is unrelated to the interception of
7 the messages. This occurs after -- or it has acquired
8 the message and it's going out and it's being compared
9 to the privacy list. So -- so there -- there are two
10 distinct functions that this block is performing. And
11 as our expert opined, again un rebutted, that there --
12 there needs to be a program to perform that diverting
13 step.

14 JUDGE ANDERSON: What about this point that
15 the patent owner raises that your expert testified that
16 the actual diverting occurs after the controlling entity
17 receives the message and analyzes it, which is -- you
18 just said a few minutes ago is the inverse of what the
19 claim requires?

20 MR. MAAS: Yeah. Again, that -- you know,

1 snippets from the deposition hardly captures the whole
2 meaning of his testimony. But the -- I think the
3 central part of some of the confusion is that even
4 though we have this separate interception step, which is
5 the claim diverting step, when we get to the controlling
6 step, the -- the isolation engine can decide whether or
7 not that message goes on to the network, and that can
8 also be seen as another diverting step. I think there's
9 some confusion with that.

10 JUDGE WEINSCHENK: So you're saying that --
11 oh, I'm sorry. Go ahead.

12 JUDGE ANDERSON: No. No. You got it. Go
13 ahead.

14 JUDGE WEINSCHENK: Are you saying that your
15 expert is really talking about the controlling step when
16 he was saying diverting?

17 MR. MAAS: Sometimes -- sometimes he was
18 talking about diverting in the deposition and sometimes
19 he was talking about -- he was referring to the
20 controlling step?

1 JUDGE WEINSCHENK: Okay. How do we know
2 which one he's talking about?

3 MR. MAAS: It's clear from his -- from his
4 declaration which one he's talking about. He's -- he's
5 very thoughtful in underlying the language. If we turn
6 to -- I believe it's -- Appendix A(b)2.

7 Apologize, Your Honor.

8 JUDGE BISK: I'm sorry. You're running
9 into your 15-minute rebuttal time.

10 MR. MAAS: All right.

11 JUDGE BISK: You need to decide what you're
12 going to do.

13 MR. MAAS: I'll -- I'll -- thank you, Your
14 Honor. I'll continue to respond to the question.

15 So we have 24(b) of -- this is the -- one
16 of the independent claims, and that's the diverting unit
17 of 24(b). And so our expert -- and, sorry, let me get
18 to the page. And so this is part of the -- well, the
19 portion of D'Aviera that he cites in support of -- of
20 the -- the diverting unit be disclosed, and it's clear

1 that he's relying on the -- the portion of D'Aviera
2 which describes the isolator engine as intercepting
3 messages that are being sent by the application and then
4 it retransmits.

5 JUDGE WEINSCHENK: So are you saying that
6 we should sort of look past the deposition testimony
7 where he got confused and just rely on his declaration?
8 Because it seems he -- he may have contradicted himself
9 a bit.

10 MR. MAAS: There is absolutely no
11 contradiction. He was implying the diverting as
12 construed by the court, which wasn't change -- changing
13 course of the message. If the message is -- is held by
14 the controlling, then it's diverted too. So there was
15 no inconsistency with his testimony.

16 JUDGE WEINSCHENK: You're saying it's
17 diverted twice?

18 MR. MAAS: In that instance it is. It --
19 the '923 patent talks about various different ways to
20 control the message. It talks about even modified

1 message. D'Aviera doesn't modify messages. But it also
2 talks about retaining -- preventing the message from
3 going out.

4 JUDGE WEINSCHENK: So you're saying the
5 controlling can be a second diversion by it saying it
6 doesn't go to the Internet?

7 MR. MAAS: Yes. But there has to be a
8 first diversion to get to the controlling entity or the
9 controlling entity won't be able to do that.

10 JUDGE WEINSCHENK: And you're saying that
11 the -- the portions of your expert's deposition the
12 patent owner refers to is really talking about the
13 diversion that occurs as part of the controlling step?

14 MR. MAAS: Yes.

15 JUDGE WEINSCHENK: Okay.

16 MR. MAAS: If there are any more questions,
17 I'll be glad to answer them.

18 JUDGE BISK: Okay. Thank you.

19 MR. MAAS: Thank you.

20 MR. MURPHY: Your Honor, I would like to

1 start with slide 21. I don't know if there's an issue
2 here. It sounds like we're in agreement about what the
3 claim requires. The diverting limitation is an
4 intervening step. It's performed after a message has
5 been sent from the claimed application program but
6 before the message is received by the claimed
7 controlling entity. So unless you have some other
8 questions about the order of these steps, then I'll move
9 on to the next section.

10 Here's another excerpt on slide 23. Within
11 the expert declaration, he also seems to agree with this
12 required ordering of the step. "After an application
13 generates outbound messages, at least some of generated
14 messages are diverted to the controlling entity on their
15 way -- on their way from the application to the network.
16 The controlling entity then evaluates the diverted
17 messages."

18 As the Board is aware, in their claim
19 construction, you construe the term "diverting" to be
20 "changing the course of" and "divert" to be "to change

1 the course of." In the context of the claims, this will
2 require some intervening step before it reaches the
3 controlling entity for the message to have its course
4 changed.

5 JUDGE WEINSCHENK: Does patent owner agree
6 with that construction?

7 MR. MURPHY: Patent owner has no stance on
8 that construction.

9 I think part of the problem here, as you
10 can tell, the petitioner instructs to articulate exactly
11 what the diverting step was. It's certainly not
12 disclosed in D'Aviera itself. Essentially relies on the
13 expert declaration only.

14 JUDGE WEINSCHENK: No. No. Why -- why --
15 why doesn't the portion of -- D'Aviera says it
16 intercepts the message. Why isn't that a diversion?

17 MR. MURPHY: First of all, it just uses the
18 word "intercepts." If you read between the lines what's
19 actually going on, this is a standalone application
20 program. The isolator engine, when it's turned on, a

1 separate register will turn on that will say "I'm going
2 to listen to a certain port number." When the isolator
3 engine is not turned on, it will not listen to that port
4 number.

5 So the hooking technique in the
6 intercepting that's occurring, there's nothing that
7 happens between the application program and the isolator
8 engine. The only thing that occurs, with any type of
9 logic, is only after it's received by the isolator
10 engine. And there it just simply stops the message.

11 JUDGE WEINSCHENK: And I guess the question
12 is, what about the part that says the application sends
13 a message to the network and the isolator engine
14 intercepts that? That seems to me to be it's intended
15 to go to the Internet, and then it changes course by the
16 isolator engine intercepting that. Why does that not
17 teach a diversion? I understand that -- that maybe it
18 diverts all of the messages, but -- is that your point?
19 That if you divert all of them, there's not a diversion
20 anymore?

1 I'm struggling to understand what -- what
2 your -- what your argument is about that portion.

3 MR. MURPHY: Sure. Our argument is there's
4 no disclosure in D'Aviera between the alleged
5 controlling entity, which is the isolator engine, and
6 after the application program.

7 JUDGE WEINSCHENK: So you're -- you're just
8 arguing that there's -- something separate needs to be
9 there apart from the isolator engine?

10 MR. MURPHY: Yes. Just like it sounds like
11 the petitioner and the patent owner agree on the
12 diverting stuff occurs after the application program
13 sends a message and before --

14 JUDGE BISK: So why --

15 MR. MURPHY: -- the message is converted --
16 I'm sorry.

17 JUDGE BISK: -- (unintelligible) two
18 separate blocks on the -- on the diagram there?
19 There -- there are federal circuit cases that seem to go
20 two -- both ways on claims where there are multiple

1 elements, whether it has to be in the prior art or
2 whether it has to be also multiple -- multiple elements.
3 Why in this case does it have to be multiple elements,
4 and why can't it be all in that one box?

5 MR. MURPHY: I'll go back to the claim
6 language on slide 21. Here "an application program is
7 configured to send messages." That's the first step.
8 Then after the message is sent from the application
9 program, there's "a diverting unit configured to convert
10 a message of the messages sent from the application
11 program to a controlling entity." Therefore, the
12 diversion step has to occur before the message is
13 received by the alleged controlling entity. And here
14 D'Aviera does not disclose that.

15 So if you want to focus on the second
16 limitation here --

17 JUDGE BISK: Can you go back --

18 MR. MURPHY: Sure.

19 JUDGE BISK: So you're --

20 MR. MURPHY: So --

1 JUDGE BISK: So you're saying that the
2 diverting unit has to separately send it to the
3 controlling entity?

4 MR. MURPHY: Yes, Your Honor.

5 JUDGE BISK: Is there a separate setting in
6 there?

7 MR. MURPHY: Yes, Your Honor. I think
8 it's -- I think it's clear from the claim language here
9 just by looking at the underlying language where "a
10 diverting unit is configured to convert a messages of
11 the messages sent from the application program to a
12 controlling entity."

13 JUDGE BISK: But it contains the point it's
14 sent to the subscribing areas from the application
15 program.

16 MR. MURPHY: Correct. So messages that are
17 sent from the application program are sent. The
18 diverting unit then diverts those messages sent from the
19 application program to a controlling entity.

20 JUDGE BISK: And why can't the controlling

1 entity and the diverting unit be in the same block on
2 the -- on the figure?

3 MR. MURPHY: Well, I think it would render
4 the claim nonsensical if you have to divert a message to
5 something that it already was itself.

6 So, I mean, if we were to put an isolator
7 engine -- or if we were going to substitute the word
8 "diverting unit" for "isolator engine," it would read an
9 application program configured to send messages, and an
10 isolator engine will be configured to divert a message
11 of the messages sent from the application program to an
12 isolator engine. So how can one thing do both?

13 JUDGE BISK: Well, to me, I'm reading
14 that -- that claim element limitation there as diverting
15 away from the communication network, so it doesn't
16 matter to me where it diverts it to. It could divert it
17 to itself. It's still -- it's being diverted away from
18 its destination of the communication network.

19 MR. MURPHY: I read it as to say the
20 message is destined to the communication network.

1 JUDGE BISK: Right.

2 MR. MURPHY: But it's diverted to a
3 controlling entity.

4 JUDGE BISK: Right. And -- and why
5 can't -- why can't that controlling entity also be the
6 diverting entity?

7 MR. MURPHY: That's here. If you look at
8 the box, we're considering the isolator engine as the
9 controlling entity. Something before the controlling
10 entity has to divert the message to the controlling
11 entity. So there has to be a similar type of logic box
12 somewhere between the application program and the
13 isolator that has the capability to divert a message
14 before it reaches the controlling entity.

15 Turn to slide 29.

16 In petition and Petitioner's decla --
17 expert declaration, it was very unclear of what they
18 were even alleging the diverting unit was. They never
19 cited that the isolator engine or the interception
20 engine was the diverting unit. They just cite the --

1 why it's squashed from the patent, the prior art, and it
2 was left to us to try and figure out what they were
3 alleging.

4 In Petitioner's expert declaration, he
5 claims -- this is a conclusory statement. He says,
6 "D'Aviera's inherently discloses a program for diverting
7 messages from application program. They don't ever cite
8 the -- where this program is, why isn't it inherent,
9 where is it located between the application program and
10 the controlling entity, and -- they don't show any of
11 that.

12 Now, as you mentioned in the
13 cross-examination, Petitioner's expert clarifies for us
14 for the first time that they were reading the
15 interception module of D'Aviera performed both the
16 diverting step and the controlling step.

17 And here we get into some deposition
18 testimony that you were asking the petitioner about.
19 Here we think it's clear from the record, from the
20 deposition testimony, that to the extent that they are

1 alleging that there is a diverting unit, they're clearly
2 saying that the diverting unit -- the diverting doesn't
3 happen until after the message is received by the
4 controlling entity. Which, as Petitioner has agreed to
5 earlier, they agreed that a diverting step must occur
6 before the controlling step.

7 Here they say we mischaracterized his
8 testimony. I'll say that if we mischaracterized his
9 testimony, why did Petitioner not go forward with a new
10 declaration for the expert to clarify his testimony?

11 JUDGE BISK: So you're asking why didn't he
12 put in a new declaration when they replied?

13 MR. MURPHY: Correct.

14 JUDGE BISK: Okay.

15 MR. MURPHY: So here I think there's blocks
16 of text listed throughout the response, and -- and the
17 slides are clear that -- "The diverting step occurs
18 after the isolator engine has received the messages,
19 correct?"

20 It's very clear, "Well, for diverting to

1 occur, the diverting has to be performed on a message of
2 the messages, so diverting process has to have knowledge
3 of a message of the messages, so, if I think I
4 understand your question, the answer is yes."

5 "So it's your opinion that the isolator
6 engine determines whether or not the course of the
7 message should be changed?"

8 "Yes. That the thing that makes the
9 decision of whether to -- whether to divert the message
10 or not."

11 JUDGE WEINSCHENK: How do you respond to --
12 to Petitioner's argument that his testimony is really
13 referring to the controlling step and not the diversion
14 step? There's some confusion about what the expert was
15 actually talking about?

16 MR. MURPHY: Well, I mean, if you look at
17 slide 32, for example -- "So I'm asking, in D'Aviera,
18 when are the messages diverted?"

19 "The messages are diverted once they enter
20 block 225," which is the isolator engine. So he's

1 saying they're not diverted until after they've already
2 entered the isolator engine and go through the process
3 of the isolator engine, if at all.

4 Another question: So, in D'Aviera, the
5 diverting step occurs after the messages are received by
6 the isolator engine?"

7 "After the messages enter 225, yes."

8 In 225, as you can see from Figure 2, it
9 diverts to the isolator engine.

10 JUDGE WEINSCHENK: I think what
11 Petitioner's argument is is that there's a -- there's a
12 first step where it intercepts the message, which is
13 the -- technically the diverting step, and there's
14 something that -- where it has to control what happens
15 to that message, and they say one way of controlling it
16 would be diverting it somewhere other than it's intended
17 to be. Diverting, again, meaning not letting it go to
18 the Internet. Do you agree with their characterization
19 of that testimony, or do you think it's something
20 different?

1 MR. MURPHY: No, I don't agree with that
2 characterization of the testimony at all, Your Honor.

3 I mean, here (unintelligible) the context
4 as when we're talking about it. If you look at it as a
5 whole as to the deposition testimony, the transcript,
6 it's very clear I'm talking about the diverting step.
7 Step 24B or Step 1B.

8 Here I'm also using -- my question's the
9 claim construction of what diverting is. "So the
10 isolator engine determines whether or not to change the
11 course of a message"?

12 The slide before that, slide 33, "So it's
13 your opinion that the isolator engine determines whether
14 or not the course of the message should be changed?"

15 So, then, if you go through -- jump ahead
16 to Calder, he had very similar testimony on that. And
17 there it's very clear some of the questions were
18 actually asking about Step 24B. Questions are crystal
19 clear it's talking about the diverting step and not
20 talking about the controlling step.

1 "Is it your opinion that step 24B occurs
2 after the message that's received by the interception
3 module?"

4 Step 24B under the claim chart refers to
5 the diverting unit.

6 "Yes. The interception module has to make
7 decisions on and manipulate the messages or the system
8 call, so, of necessity, the information would have to be
9 available to interception module for it to do its task."

10 That's an example where, you know, it's
11 crystal clear on the actual question, but I think if --
12 Your Honor, if you review the deposition testimony and
13 the surrounding questions around it, it's pretty clear
14 that we're talking about the diverting step and not the
15 controlling step.

16 So here we have a sum-up for D'Aviera, and
17 I think there's two big points. One: It's our position
18 that D'Aviera has no disclosure on the diverting step of
19 an intervening step that occurs after a message has been
20 sent from the application program and before the message

1 is sent to a controlling entity. We don't think there's
2 any disclosure of that at all in D'Aviera.

3 Two: To the extent that, you know, they
4 want to allege that there is a diverting step, I think
5 their expert made it clear that the diverting step -- if
6 there is a diverting step -- doesn't occur until after
7 it's already reached the controlling entity.

8 JUDGE ANDERSON: You're good with the
9 construction change course of to change the course of or
10 divert?

11 MR. MURPHY: Yes, Your Honor. For the
12 purposes of this proceeding, we don't have any issues
13 with that construction.

14 MR. MURPHY: The other ground that this
15 was -- well, before I move on, Your Honor, would you
16 like to talk anymore about D'Aviera?

17 JUDGE WEINSCHENK: Nothing from me on it.

18 MR. MURPHY: I think Calder and Richardson
19 has the exact same issues with it. So if you can flip
20 through those, I think the arguments are going to be the

1 same. So if you have any actual questions about

2 Calder/Richardson, please let us know.

3 So here, this is a combination of

4 Richardson and Calder. Slide 38's clear Richardson --

5 first of all, the Board rejected Richardson on its own

6 not disclosing the diverting step. And, second of all,

7 Petitioner's claim charts for the proposed

8 Calder-Richardson combination, they didn't provide any

9 citations from Richardson that disclosed the converting

10 unit, and their reply didn't seem like they had any

11 issue with Richardson filling in the gaps for Calder.

12 So, again, I think for the same issues with D'Aviera as

13 Calder, "Calder fails to disclose intervening diverting

14 step performed after a message has been sent from the

15 claimed application program and before the message is

16 received by the claimed controlling entity."

17 And here I think this is a clear statement

18 from Calder as to what's really going on in Calder.

19 "The application package is modified such that it

20 communicates with an interception module." So similar

1 to D'Aviera, a message is always sent to the controlling
2 entity. Here the alleged controlling entity is an
3 interception module.

4 JUDGE WEINSCHENK: Does it matter if all
5 messages are sent to the interception module? I think
6 we talked about this before, and I guess I'm not sure
7 what your position is. Does something less than all of
8 the messages have to go there in order for it to be
9 diverted, or can all the messages be diverted?

10 MR. MURPHY: Your Honor, all the messages
11 can go there, but there has to be some -- it's our
12 position there has to be some logic between the
13 application program and the controlling entity. There's
14 some of type of logic, some type of analysis "Do I need
15 to convert this message to the controlling entity?"

16 JUDGE BISK: Why logic? What -- what in
17 the claim construction --

18 MR. MURPHY: Oh, logic or function or
19 structure. There needs to be something between -- after
20 the message is sent from the application program, before

1 it's received by controlling entity, there has to be
2 something that's capable of performing, you know,
3 changing the course of the message basically by
4 rerouting it to the divert -- to the controlling entity.

5 I think the petitioner will struggle -- I
6 mean, and bring up in rebuttal time, I'd love to see,
7 like, explicit disclosure from Calder or from D'Aviera
8 that does show this intervening step of the diversion
9 happening after a message is sent from the application
10 program and before it's received by the controlling
11 entity. I think they really struggle with that, and
12 they can't point to anything.

13 And then, again, this is another example as
14 to it seems like they're struggling to figure out what a
15 diverting unit could be in these references and really
16 struggled with it. So in their expert declaration, he
17 says that "Calder further inherently discloses a program
18 for converting messages from application programs."
19 They weren't able to point to anything. He wasn't able
20 to explain why it was inherent. He wasn't able to

1 explain where this inherent diverting occurred. He just
2 has a conclusory statement in there saying that Calder
3 further inherently discloses a program for diverting
4 messages from the application program.

5 Then, again, we get into his testimony
6 regarding, you know, at what point does the diverting
7 step occur.

8 So I ask my question: "I think we're on
9 the same page, but just to clarify, the diverting step
10 occurs after the interception module has received a
11 system call?"

12 And here they're interpreting system call
13 as a message.

14 "Yes. Again, the brains and the brawn.
15 The interception module receives the information from
16 the application program via system call, and makes the
17 decision based on that, and then the controlling entity
18 is the brawn, and it makes the process of controlling
19 whether that message actually goes to the outside
20 network or not."

1 This is another example he knew exactly
2 what the difference was between diverting and
3 controlling because he's talking about the fact that it
4 doesn't get diverted until after it's already been
5 received by the controlling entity. And then after it's
6 received by the controlling entity, not only is it
7 diverted within it, but then it also determines whether
8 that message actually gets out to the outside network or
9 not, which they're referring to as the controlling
10 entity -- the controlling aspect of it.

11 Here's another example as to how there can
12 be no confusion whether we're talking about diverting or
13 controlling. Again, Your Honor, this is what -- this is
14 the slide we went over earlier. We're talking about the
15 context of 24B, which is clearly the diverting unit
16 claim limitation.

17 "Is it your opinion that step 24B occurs
18 after the message that's received by the interception
19 module??"

20 "Yes. The interception module has to make

1 decisions on and manipulate the message or the system
2 call, so, of necessity, the information would have to be
3 available to the interception module for it to do its
4 task."

5 So clearly we think this is a clear
6 disclaimer that they're arguing that the alleged
7 diverting unit doesn't do any type of diverting until
8 after the message has already been received by the
9 alleged controlling entity.

10 Do you have any other questions regarding
11 the Calder or Richardson combination?

12 JUDGE WEINSCHENK: Nothing from me.

13 JUDGE ANDERSON: I guess Calder and
14 Richardson is -- is an obvious -- does the expert --
15 does the -- does the Williams' expert talk about -- does
16 he talk about the motivation to combine the two? And is
17 there some evidence of record that says you wouldn't --
18 that supports your position that it's the control --
19 that the controlling occurs before the -- the diverting,
20 and, therefore, that step is not met under the obvious

1 combination of Richardson -- or Calder and Richardson?

2 MR. MURPHY: Yeah, Calder and Richardson.

3 The best way to address that would be the Board, in the

4 decision to institute, already found that Richardson

5 does not disclose the diverting step or a diverting

6 unit. And further to that, if you look at the expert's

7 claim charts, he does not cite to the diverting unit.

8 He does not cite to any passages from Richardson.

9 JUDGE ANDERSON: So is part of your -- I'm

10 sorry. Is part of your position that the expert's --

11 that their expert supports your view of what Richardson

12 combined with Calder -- Calder -- Calder combined with

13 Richardson, excuse me, does not show this particular

14 order of steps?

15 MR. MURPHY: Well, it seems like we're in

16 agreement about the order of the steps at this point.

17 JUDGE ANDERSON: Yeah. But beyond that, is

18 it supported -- is the combination -- is there evidence

19 that you can point to that that combination will not be

20 obvious to the person of ordinary skill, other than

1 attorney argument?

2 JUDGE BISK: I think that the -- I think
3 the question is even if assuming we agree that Calder
4 shows no separate entity for diverting, and assuming
5 that we agree that that expert says that diverting comes
6 after, would it have been obvious to a person of
7 ordinary skill to flip it and do the diverting first and
8 even -- just because it really only makes sense, and
9 wouldn't be obvious to a separate, you know, program
10 entity?

11 MR. MURPHY: No, Your Honor, I don't think
12 it would be obvious. That's why these references are
13 lacking that disclosure. There is no -- there's no
14 intermediary intervening box, will you, that does a
15 diverting step. It simply analyzes the message as to
16 determine if it should be sent to a controlling entity.

17 JUDGE BISK: But -- so what -- what you're
18 saying right now is different. Where does it say that
19 the -- the diverting unit has to analyze and decide
20 whether it gets sent to the controlling entity? You

1 have to agree that the diverting unit has to be
2 separate. I don't see where the diverting unit has to
3 make any decision. It just has to divert.

4 MR. MURPHY: Right. It has to divert a
5 message of the messages.

6 JUDGE BISK: Right. So where is any
7 analyzing going on there?

8 MR. MURPHY: Well, in order to divert,
9 there has to be some type of built-in logic for it to
10 change the course -- be capable of changing the course
11 of a message.

12 JUDGE BISK: Okay. But that, to me, is
13 different than analyzing whether or not it's sent to the
14 controlling unit.

15 MR. MURPHY: Okay. I mean, maybe I
16 overstepped my bounds in what the claim requires, and I
17 apologize for that.

18 JUDGE BISK: But I -- but I think is
19 similar to Judge Weinschenk's question, and I'm -- we
20 want to make sure we're all on the same page. Does --

1 does the diversion -- is it okay for the diverting unit
2 to just pass everything along, in your view? Or does
3 the diverting unit have to do something more? We want
4 to make sure that we're understanding your position.

5 MR. MURPHY: I think it has to be capable
6 of diverting a message.

7 JUDGE BISK: And by that --

8 MR. MURPHY: It has to be capable --

9 JUDGE BISK: -- just passing it along?

10 MR. MURPHY: It has to be capable of
11 changing the course of a message --

12 JUDGE BISK: Okay.

13 MR. MURPHY: -- after the message has been
14 sent from the application program --

15 JUDGE BISK: Okay.

16 MR. MURPHY: -- and before it's received by
17 the controlling entity.

18 JUDGE BISK: But it does not have to be
19 capable of, based on some other decision-making process,
20 deciding what messages go here and what goes there?

1 That -- that -- it could do that, but it's not
2 necessary?

3 MR. MURPHY: I would agree with that.

4 JUDGE BISK: Okay.

5 MR. MURPHY: I mean, as long as it's
6 capable of changing the course of a message. After the
7 message has been sent from the application program and
8 before it's received by a controlling entity, as long as
9 it's capable of the deciding whether or not it should
10 divert the message or not.

11 JUDGE BISK: Okay.

12 MR. MURPHY: Judge Anderson, I don't know
13 if I answered your question earlier, but, I guess, my
14 argument with that would be -- it would not be obvious
15 because neither Calder or Richardson disclosed anything
16 close to the diverting step message as what's required
17 by the claims. So therefore they wouldn't be obvious to
18 combine because neither one shows that element.

19 JUDGE ANDERSON: Yeah, that was -- that was
20 my question, which Judge Bisk asked better than I did,

1 but I want to know what that --

2 MR. MURPHY: I understood the question.

3 JUDGE ANDERSON: -- the evidence that you're
4 relying on or that's not shown. And I just heard your
5 answer, so that's fine.

6 MR. MURPHY: Your Honor, so I'm going to
7 spend the last few minutes answering -- talking about
8 your favorite topic again, the RPI issue.

9 I'm going to go a little slower through
10 this HTC America presentation. Here NEC Corporation has
11 the same issues. And I think our position is clear --
12 just from the joint motion to terminate on its face,
13 it's clear that NEC Corp handles the removal of the
14 petitioners from this IPR proceeding. I think the
15 highlighted portions in the joint motion to terminate is
16 clear on that.

17 CCE and NEC Corporation have also agreed to
18 jointly request the termination of this proceeding.

19 This is not talking about others and is licensed to us
20 and you guys are -- petitioners are subsidiaries so

1 therefore, you know, you get the benefit of whatever
2 license we may have gotten. This is clearly saying CCE
3 and NEC request termination of this proceeding, which is
4 actual control over the proceeding by NEC Corp, who was
5 never identified as a real party in interest.

6 Slide 11 makes it clear again the
7 "settlement agreement's made in contemplation of
8 termination of the proceeding." Of this proceeding; not
9 of the underlying litigation. But the settlement
10 agreement was made in contemplation of a termination of
11 this proceeding.

12 Let's just talk a little about HTC America.
13 Here it's unclear whether -- as you saw, like, in the
14 petitioner's cover page, HTC America is identified as an
15 RPI in this proceeding. Generally, conference calls
16 with the Board Petitioner asked the Board if they could
17 amend the petition to remove them as an RPI because that
18 was a scrivener's error. So in this case, you have an
19 instance where due to scrivener's error of them
20 accidentally be included as an RPI, they asked the Board

1 if they could removed them as an RPI. All the RPIs ever
2 filed by HTC Corp were always joined by HTC America. So
3 HTC America seriously thought it was an RPI in every
4 other proceeding they've ever done before these ones.

5 You'll see another flavor of the other line
6 related IPR proceeding where on slide 15 their senior
7 director -- HTC America's senior director of patent
8 litigation was a signatory for filing a power of
9 attorney for HTC Corp. So the three remaining IPR
10 proceedings are still alive.

11 JUDGE WEINSCHENK: Is there anything wrong
12 with identifying someone as an RP -- RPI when they're
13 not actually one? So if they accidentally
14 overidentified, is that -- is that a -- is that a
15 problem?

16 MR. MURPHY: I don't think that in itself
17 is a problem. I think the problem is if you look at the
18 circumstantial evidence and totality of the
19 circumstances, it doesn't all add up. Did they
20 really -- did they really commit a scrivener's error by

1 including an RPI in two of the six IPRs?

2 JUDGE WEINSCHENK: I guess I'm asking is
3 your argument regarding HTC America really limited to
4 the 1134 case and not this case?

5 MR. MURPHY: I think as a whole -- you have
6 to look at all these cases as a whole for all the RPI
7 issues the same. Like is -- was it a scrivener's error?
8 Should they be an RPI? Do they need to be removed as an
9 RPI since it was a scrivener's error?

10 JUDGE BISK: So HTC America was -- was
11 identified in this case?

12 MR. MURPHY: They were identified in this
13 case, Your Honor.

14 JUDGE BISK: All right.

15 MR. MURPHY: But during conference calls
16 with the Board, they said that was due to scrivener's
17 error, and they asked the Board if they could remove
18 themselves as an RPI --

19 JUDGE BISK: But --

20 MR. MURPHY: -- and file a corrected

1 petition --

2 JUDGE BISK: So what's the problem in this
3 particular case with the --

4 MR. MURPHY: In this particular case,
5 they're saying that they should not be a -- should not
6 have been identified as an RPI.

7 JUDGE BISK: That's the problem? So
8 what -- what -- so they overidentified --

9 MR. MURPHY: Well, no. They're saying they
10 never should have been identified in the first place.
11 They said them identifying them as a -- HTC America as
12 an RPI was a scrivener's error. It never should have
13 occurred.

14 JUDGE BISK: And so --

15 MR. MURPHY: So, therefore, they're
16 basically saying -- they're taking the approach that HTC
17 America shouldn't even be in this case.

18 JUDGE BISK: Okay. And what's the problem
19 with that? To me, it seems like this is --

20 MR. MURPHY: Is HTC America named as an RPI

1 or is it -- it is not? They asked the Board if they
2 could remove them due to scrivener's error, the fact
3 that they were an RPI.

4 JUDGE BISK: Right. So -- but -- but Judge
5 Weinschenk asked what if they -- what if you over -- you
6 overput --

7 MR. MURPHY: No, we don't have an issue
8 with that, but the fact is they requested HTC America to
9 be removed from an RPI. So we're covering our basis to
10 the extent that they file a motion for correction of a
11 petition due to scrivener's error, and all of a sudden
12 HTC America was not identified as an RPI in this
13 proceeding.

14 JUDGE BISK: Oh, so the only problem is
15 they take HTC America off?

16 MR. MURPHY: They've already asked to take
17 HTC America off.

18 JUDGE BISK: Okay. But -- but the only
19 problem if they do that -- if they don't take them off,
20 in this case there's not a problem? Only in the 1135 is

1 there a problem?

2 MR. MURPHY: NO1135, whichever --

3 JUDGE BISK: Right.

4 MR. MURPHY: That's right, Your Honor.

5 JUDGE BISK: Yeah.

6 MR. MURPHY: With respect to the HTC
7 America argument.

8 JUDGE BISK: Okay.

9 MR. MURPHY: And the NEC Corporation
10 argument --

11 JUDGE BISK: I just want to make sure I --

12 MR. MURPHY: Okay. We're on the same page.

13 JUDGE BISK: Okay. Very good. Thank you.

14 I think we're actually over your time. Did
15 you have anything else you wanted to add?

16 MR. MURPHY: No, Your Honor. That's it.
17 Thank you.

18 JUDGE BISK: Okay. And you have ten
19 minutes left on your time.

20 MR. MAAS: Yes. Thank you, Your Honor.

1 JUDGE BISK: Go ahead.

2 MR. MAAS: I would like to address

3 Mr. Williams' testimony -- deposition testimony --

4 JUDGE BISK: Okay.

5 MR. MAAS: -- that opposing counsel raised.

6 This is their slide -- this is patent

7 owner's slide 32. The vast majority of these slides are

8 fully consistent. There's no -- no confusion other than

9 the confusion that patent owner is trying to -- trying

10 to generate.

11 In order -- in the petition in his

12 declaration, Dr. Williams testified that, for D'Aviera,

13 the isolator engine performs a diverting step. They --

14 they said -- opposing counsel even said that we just --

15 that he just cited to us because of -- of disclosure

16 from D'Aviera and that leaving it to -- I guess, to the

17 Board and to them to figure out exactly what he was

18 pointing to.

19 As I pointed out in direct, my -- my

20 opening, he actually underlined what he was calling --

1 what he was calling interceptor module when it
2 intercepts a message, so it was clear that the Board
3 understood what the institution said, and it clear the
4 patent owner understood it too.

5 The confusion in this snippet of -- of
6 testimony is not Dr. Williams. It's -- it's patent
7 owner's. Dr. Williams, the isolator engine does the
8 diverting -- it does the diverting, it does the
9 controlling. The question doesn't break it down.

10 It just says, "So the -- the diverting
11 occurs after the messages are received by the isolator
12 engine?"

13 And he said "Yes," basically.

14 JUDGE BISK: Well, what about the
15 questions, though, where they specifically identify the
16 limitation by number? I think it's 24B.

17 MR. MAAS: I'll jump to that.

18 JUDGE BISK: Okay. Thank you.

19 MR. MAAS: And just to wrap this up, but I
20 won't go through -- but the next few slides, if you look

1 at it in terms of the isolator -- the isolator engine
2 doing both -- both functions, it's -- it's clear that --
3 that the isolator -- the isolator engine has to -- in
4 order to divert, it has to actually receive the message.
5 It can't divert something it doesn't receive.

6 I'll jump to -- I'm jumping to slide 46.

7 This is the patent owner's slides. So this -- this
8 is -- so this --

9 "Is it your opinion that step 24B," which
10 is the diverting step," occurs after the message that's
11 received by the interception module?"

12 And he says, "Yes."

13 And this is in reference to Calder. But
14 for the interception module to do the diverting step to
15 actually divert a message, it actually has to receive
16 it. So analogous to a football player in a football
17 game, when somebody throws a pass and the -- the player
18 for the other time receives it -- intercepts it, he has
19 to receive it. He still has a decision he has to make
20 whether to take it downfield or maybe kneel if it's

1 towards the end of the game. That's more --

2 JUDGE BISK: So that -- actually, that
3 confuses me a little because when I think of diverting
4 as -- what I thought you were saying is that means that
5 by the -- is that the diverting is, basically, at the
6 same time it's -- it is the receiving of it because the
7 message is not going to a number, but it is instead
8 going to the interceptor module. That is the diversion
9 itself. So there is no -- so -- so it does -- it is
10 nonsensical to say that it -- the diverting happens
11 after it receives it. The diverting is the fact that
12 it's receiving --

13 MR. MAAS: It -- exactly. It is the
14 reception.

15 JUDGE BISK: So this answer -- I mean,
16 the -- the -- the explanation afterwards I can see may
17 be a little confused because the interception module is,
18 in his mind, acting as both things. So since the
19 diverting is the receiving, then there's a -- you know,
20 a part of the controlling entity could be another

1 diverting, so that happens after.

2 But 24B is a little specific. It's asking
3 this diverting step occurs after the message is
4 received, and he says, "Yes." To me, that's -- that's a
5 little -- I can see why the patent owner would point
6 that out as being not in line with what you're saying.

7 MR. MAAS: Yeah, it is a little
8 confusing --

9 JUDGE BISK: Yeah.

10 MR. MAAS: -- because we're dealing with a
11 box. And I agree with you that diversion occurs when
12 that message -- at that point when that message reaches
13 that box.

14 JUDGE BISK: Uh-huh.

15 MR. MAAS: What causes it to divert? It's
16 a program within that box. So it -- it's confusing when
17 we get to the temporal about when and after and at that
18 moment. It's very difficult to --

19 JUDGE BISK: And I don't think -- does your
20 theory -- it doesn't -- or your -- it -- your petition

1 doesn't rely on the fact that in order to divert you
2 have to receive, does it? I would say that that's not
3 what diverting means.

4 In the football metaphor, if I just -- if
5 I -- if I stand between the two guys, the one running
6 the ball and the one catching it -- I don't know the --
7 tackle -- football terms. Sorry. And -- and you -- and
8 I just put my hand up and, you know, bat it away, I
9 didn't receive the football, but I diverted it from --
10 from where it was going. So I -- I think that my -- in
11 my mind, a construction of diverting does not require
12 receiving.

13 MR. MAAS: No. The construction of
14 diverting just requires change in course.

15 JUDGE BISK: Okay.

16 MR. MURPHY: And that's --

17 JUDGE BISK: In -- in D'Aviera they happen
18 to be the same thing, but --

19 MR. MAAS: Yes.

20 JUDGE BISK: Under your --

1 MR. MAAS: Yeah. We -- we weren't
2 challenging the construction.

3 JUDGE BISK: Okay.

4 MR. MAAS: Challenging the construction is
5 change of course so -- and in D'Aviera, both -- in
6 D'Aviera, the messages are going out to the network.
7 They get diverted to the -- by the -- by the isolator
8 engine to the isolator engine, which then can be the
9 controlling step.

10 JUDGE BISK: Okay.

11 MR. MAAS: Okay. And that's -- and the
12 controlling step, as I've mentioned, could include
13 further diversion where the message -- where it decides
14 not to let the message go out.

15 JUDGE BISK: And so -- so I guess my
16 ultimate question is, what do we do with the answer
17 "Yes" here?

18 MR. MAAS: The -- the answer with "Yes"
19 is -- looking at the weight of his other testimony in
20 his declaration, the other excerpts of the deposition in

1 which the patent owner has called out, which are fully
2 consistent with his declaration given the confusion that
3 we're dealing with a box, we're -- it -- it seems like
4 we're putting a lot of weight on the word "after."

5 So -- so the -- because the vast majority
6 of the call (unintelligible) providing the slides are
7 fully consistent with his declarations, so it's -- it's
8 one or two that there's some confusion.

9 JUDGE WEINSCHENK: Does Petitioner agree
10 with the construction of divert that was in our decision
11 institution?

12 MR. MAAS: Yes, Petitioners -- for purposes
13 of the IPR.

14 JUDGE BISK: I think that we're actually
15 over time now, so if you have one more short statement
16 you want to make.

17 MR. MAAS: I would as soon ask Steve Moore,
18 who represents HTC, to address the RPI issue with
19 respect to HTC. With respect to NEC, we'd just like to
20 incorporate our prior --

1 JUDGE BISK: I think HTC, though, I think
2 that -- well, come on up and -- and address it.

3 MR. MAAS: With respect to NEC, the RPI
4 issue we'd like to just incorporate, if we may, the --
5 from the -- the petitioner's arguments in IPR1134.

6 JUDGE BISK: Okay. We can.

7 MR. MOORE: Yes, Your Honor. Steve Moore
8 for HTC. The only thing that I might add to your
9 analysis earlier is that we would incorporate the -- the
10 information provided in the previous case and that
11 analysis on where is the relevant information --
12 where's the relevant facts in this case.

13 JUDGE BISK: But it seems to me there isn't
14 an issue in this case.

15 MR. MOORE: Secondly. We completely
16 agree.

17 JUDGE BISK: Okay.

18 MR. MOORE: There is no issue in this case.
19 Regardless of whether or not they were or were not
20 supposed to be named, our position is they were not.

1 Hearing that they were overincluded, there -- there
2 isn't an issue that would require the Board to
3 adjudicate.

4 JUDGE BISK: All right. Thank you.

5 We're adjourned.

STATE OF TEXAS
(COUNTY OF TARRANT)

This is to certify that I, HOPE LEWANDOSKI, a
Certified Shorthand Reporter, reported in shorthand
the proceedings at the Dallas Bar Association on August
26, 2015, at 5:33 p.m., and that the foregoing 51 pages
contain a true and correct verbatim transcript to the
best of my ability of said proceedings.

Given under my hand and seal of office on this
the 9th day of September, 2015.

HOPE LEWANDOSKI, Texas CSR 6255

Expiration Date: 12-31-15

DEPOTEXAS

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